



In the instant case, if plaintiff obtains a favorable decision, it would necessarily call into question the validity of his revocation and recommitment to Missouri Department of Corrections. Therefore, because plaintiff has not demonstrated that his revocation and recommitment have been invalidated, he cannot recover damages for the actions of those alleged to have brought about the revocation and recommitment. See Ladd v. Mitchell, 92 F.3d 1189 (8<sup>th</sup> Cir. 1996) (unpublished) (Kansas inmate's challenge to his 1993 return to Missouri on a 1986 parole violation warrant alleging denial of a timely revocation hearing on the 1986 warrant did not state a claim actionable under 42 U.S.C. § 1983 in light of Heck v. Humphrey, 512 U.S. 477 (1997)).

Plaintiff's first cause of action is not ripe until his underlying conviction or sentence has been set aside. To challenge his state conviction or sentence in federal court, plaintiff must petition for a writ of habeas corpus. Preiser, 411 U.S. at 501. Before seeking federal habeas relief, plaintiff must exhaust all adequate and available state court remedies. 28 U.S.C. § 2254(b); Rose v. Lundy, 455 U.S. 509, 520 (1982); Powell v. Wyrick, 657 F.2d 222 (8<sup>th</sup> Cir. 1981). The state courts must have an opportunity to review the merits of plaintiff's contentions and must be given primary responsibility in their own criminal cases. Fay v. Noia, 372 U.S. 391 (1963); Tyler v. Swenson, 527 F.2d 877 (8<sup>th</sup> Cir. 1976). Plaintiff's claims challenging his revocation of parole, denial of a timely parole revocation hearing, and extradition to Missouri on the parole revocation warrant are dismissed, without prejudice. See Schafer v. Moore, 46 F.3d 43 (8<sup>th</sup> Cir. 1995). If plaintiff is able to invalidate his revocation and recommitment, he may refile his section 1983 claims at that time.

Plaintiff's claims challenging alleged ex post facto application of the new Missouri parole statute to his parole hearings are duplicative of those claims in Granberry v. Agniel, No. 05-4219 (W.D. Mo. filed July 5, 2005), on which plaintiff has been granted leave to proceed. Accordingly, such claims are dismissed in this case, without prejudice.

Inmates who file an appeal with the United States Court of Appeals for the Eighth Circuit are required to pay the full \$255.00 appellate filing fee, regardless of the outcome of the appeal. Henderson v. Norris, 129 F.3d 481, 484 (8<sup>th</sup> Cir. 1997). The filing of a notice of appeal is considered a consent by the inmate to allow prison officials to deduct an initial partial appellate filing fee and later installments from the prisoner's account.

IT IS, THEREFORE, ORDERED that the August 18, 2005, report and recommendation is adopted [9]. It is further

ORDERED that plaintiff's claims are dismissed, without prejudice, for failure to state a claim under 42 U.S.C. § 1983. It is further

ORDERED that plaintiff's motions for injunctive relief be denied [3].

/s/Scott O. Wright

SCOTT O. WRIGHT

Senior United States District Judge

Dated: 2-14-06